SUPREME COURT OF INDIA

Medical Council of India

Vs.

G.C.R.G. Memorial Trust

C.A.No.19662 of 2017

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

23.11.2017

JUDGMENT

Dipak Misra, CJI.,

SLP(Civil)No.23410 of 2017

1. Leave granted.

2. The present appeal frescoes the scenario where one is tempted to quote a few lines from what has been stated in *Quillen v. Board of Education*[1]. It reads thus:-

"The distinction between the gourmet and the gourmand is as neat and decisive in the prosaic realm of negotiation as in the festive sphere of gastronomic enjoyment − attempting to satisfy an unrestrained or exaggerated appetite in either field may prove discomforting if not disastrous."

The purpose of referring to the same is to highlight the unrestrained and exaggerated appetite. When the factual matrix would be unrolled, the greed in all its colours shall come to the forefront.

3. The present appeal by special leave calls in question the legal acceptability of the order dated 01st September 2017 passed by a Division Bench of the High Court of Allahabad, Lucknow Bench in Misc. Bench No.13530 of 2017 whereby the High Court has quashed the order dated 19th August 2017 as well as order dated 31st May 2017 passed by the Central Government and eventually granted permission to the 1st respondent to admit students for the Academic Session 2017-2018.

4. When the matter was listed on 06th September 2017, this Court had passed the following order:

"Issue notice fixing a returnable date within four weeks. As Mr. Maninder Singh, learned Additional Solicitor General for respondent No.3-Union of India and Mr. Mukul Rohatgi, learned senior counsel has entered appearance on behalf of respondent No.1 and 2, no further notice need be issued.

As far as respondent No.5 and 6 are concerned, let notice be issued. Dasti in addition is permitted. As an interim order, it is directed that there shall be stay of the operation of order dated 1st September, 2017 further corrected on 4th September 2017. If the Institution has admitted students they are debarred from continuing in the course. We have passed this order as we while disposing of the writ petition preferred under Article 32 of the Constitution had passed the following order :-

'Learned counsel for the petitioners seeks leave of this Court to withdraw the writ petition to approach the High Court under Article 226 of the Constitution of India.
The writ petition is permitted to be withdrawn. However, it is made clear that the High Court, while entertaining the writ petition, shall not pass any interim order pertaining to the academic year 2017-2018.' We really fail to fathom the manner in which the High Court has misconstrued our order and passed the final order for 2017-2018. We are issuing notice only to test the propriety of the order and also if the Institution is eligible to get the renewal of letter of permission for 2018-2019."

The aforesaid order eloquently reflects the shock expressed by this Court. As is reflectible from the aforesaid, notice was issued only to test the propriety of the order and also if the institution is eligible to get the renewal for 2018-2019.

5. We shall initially address the first issue. To adjudge the issue of propriety of the order passed by the High Court, we are compelled to travel in a time machine. The respondent-institution had filed a writ petition, i.e., Writ Petition (Civil) No.13530 of 2017 before the High Court and was dealt with by the Division Bench of the High Court on 08th August 2017. On that day, the following order came to be passed:

"In reference to order dated 4.8.2017, the Central Government, as per the instructions received by Mr. Asit Kumar Chaturvedi, learned Senior Counsel appearing for the respondent no.1, has agreed to entertain the petitioners' matter along with other similar matters and consider it to revaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee as available on record for grant of approval to the petitioner-institution to admit the students in MBBS Course, after affording an opportunity of hearing to the petitioner-institution to the extent necessary. To facilitate the Central Government, the whole paragraph 25 of the judgment in which directive has been issued by the Supreme Court is reproduced below:

'25. In the above persuasive premise, the Central Government is hereby ordered to consider afresh the materials on record pertaining to the issue of confirmation or

otherwise of the letter of permission granted to the petitioner colleges/institutions. We make it clear that in undertaking this exercise, the Central Government would revaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. It would also afford an opportunity of hearing to the petitioner colleges /institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be completed peremptorily within a period of 10 days from today. The parties would unfailing co-operate in compliance of this direction to meet the time frame fixed.'

Therefore, we also direct the Central Government to consider the petitioners' matter accordingly within seven days as framed by Hon'ble the Supreme Court. The matter is listed before Hon'ble the Supreme Court on 24.8.2017. We, therefore, also direct the registry to list this matter on 28.8.2017."

6. In pursuance of the aforesaid order, taking note of the deficiencies, the Central Government passed the following order on 19.8.2017:

"17. Now, in compliance with the above direction of Court, the Ministry granted hearing to the college on 16.08.2017. The Hearing Committee after considering the records and oral & written submission of the college submitted its report to the Ministry. The findings of the Hearing Committee are as under-

The Committee notes that there was no deficiency of faculty and residents as per MCI assessment report. The findings of the assessor indicate some deficiency of clinical material and the observance of hospital protocols. During the course of hearing, the college produced certain documents contesting the findings of the assessors. The Committee perused the case sheet of single normal delivery on the day of inspection as shown by the college. The delivery of Ms. Sameerun was performed without blood transfusion and the mother was discharged without treatment of anaemeia when she was severely anaemic at the time of admission with a haemoglobin level of 6.5 gm%. This is gross negligence. Further, the college could not produce any Government issued birth certificates in support of their claim of average number of deliveries.
The inept handling of patients in the hospital is further confirmed during the perusal of cases pertaining to casualty and ICUs. The college could not satisfy regarding the patients in casualty wards. None of the 3 patients in ICCU seemed to have cardiac history. The pulse rate of one of the patient who was a PSVT (tachycardia) case was noted as 72/min at the time of admission. NO investigation was done. Other two patients with diagnosis of Kyphoscoliosis (spinal deformity) and vestibular neuritis (ear problem) were also admitted in the cardiac ICU. This confirms the finding of assessors and the college had no explanation. It is understood that as per MSR, the requirement is for requisite number of beds in ICUs, however, the college seem to be employing doubtful measures to show patients. It was also noted that the college was neither aware nor following the provisions of biomedical waste (BMW) rules. The explanation offered by the college in obtaining 14 cadavers from 'Dera Saccha Sauda'

> Sirsa, Haryana without requisite permission and death certificates is a serious issue to be looked into by the concerned authorities. In view of the above, despite the fact that no deficiency of faculty and residents is noted, the functioning of the hospital as per norms is in serious doubt and the Committee agrees with the decision of the Ministry vide letter dated 31.05.2017 to debar the college for two years and also permit MCI to encash bank guarantee. 18. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 to debar the college from admitting students for a period of two years i.e. 2017-18 and 2018-19 and also to authorize NCI to encash the Bank Guarantee of Rs.2 Crore."

7. As the facts would further uncurtain, the institution filed a petition under Article 32 of the Constitution before this Court and chose to withdraw the same to approach the High Court under Article 226 of the Constitution. The said order has already been quoted while reproducing the order dated 06.09.2017.

8. The content of the order dated 28.08.2017 is graphically clear. The High Court was not allowed to pass any interim order pertaining to the Academic Session 2017-2018 but the Division Bench of the High Court, for some unfathomable and inscrutable reason, referred to certain judgments of this Court and allowed the prayer. It is beyond our comprehension as to how the High Court could have even remotely thought of passing an order granting the Letter of Permission for the Academic Session 2016-2017 and renewal for 2017-2018. It is worthy to mention here that before the High Court, time was sought on behalf of the Central Government and the MCI to file counter affidavits. The same was denied and the contesting parties were deprived of the opportunity to contest. Be it noted, the writ petition that was filed before this Court was withdrawn on 28th August, 2017 and a fresh writ was filed before the High Court on 29th August 2017 and the judgment was delivered without waiting for the reply from the Central Government or MCI on 01st September 2017. It is clear as the cloudless sky that the judgment of the High Court shows unnecessary and uncalled for hurry, unjustified haste and an unreasonable sense of promptitude possibly being oblivious of the fact that the stand of the Medical Council of India and the Central Government could not be given indecent burial when they were parties on record. Such a procedure cannot be countenanced in law.

9. The controversy cannot be allowed to end with our aforesaid finding. The judicial propriety requires judicial discipline. In the absence of a reply filed by the Medical Council of India and the Central Government, it could not have been possible to answer the factual matrix of the case. What is not possible, is not possible. We may hasten to add that in respect of the cases where renewal was granted, Mr. Vikas Singh would submit that the deficiency was within the permissible limit but in the present case, it was not so and in any case, granting renewal for 2017-2018 and confirmation of letter of permission for 2016-2017 was totally unwarranted. In most of the cases, this Court has directed for re-inspection by the MCI which would then take a final decision for the academic year 2018-2019. It is a most unfortunate situation that the Division Bench has paved such a path. One cannot but say that the adjudication by the Division Bench tantamounts to a state as if they dragged themselves

to the realm of "willing suspension of disbelief". Possibly, they assumed that they could do what they intended to do. A Judge cannot think in terms of "what pleases the Prince has the force of law". Frankly speaking, the law does not allow so, for law has to be observed by requisite respect for law.

10. In this context, we may note the eloquent statement of Benjamin Cardozo who said:
"The judge is not a knight errant, roaming at will in pursuit of his own ideal of beauty and goodness."

11. In this regard, the profound statement of ***Felix Frankfurter***[2] is apposite to reproduce:

> "For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians - those impersonal convictions that make a society a civilized community, and not the victims of personal rule."
>
> The learned Judge has ***further stated***[3]**:**
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> "What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude toward law, the habits of the mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities which I am groping to characterize are ingredients of what compendiously might be called dominating humility."

12. In *Shiv Mohan Singh v. The State (Delhi Administration)*[4] , the Court has observed:

> "... a Judge even when he is free, is still not wholly free; he is not to innovate at pleasure; he is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness; he is to draw inspiration from consecrated principles' ..."

13. In this context, we may refer with profit the authority in *Om Prakash Chautala v. Kanwar Bhan*[5] wherein it has been stated:

> "19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum."
>
> And again:

> "20. A Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics."

14. In *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and another*[6], the three-Judge Bench observed:

> "32. When a position in law is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

15. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin.

16. As is perceptible, we had stayed the operation of the order at the interim stage and further directed that if the Institution had admitted students they were debarred from continuing in the course. The same stands confirmed.

17. Further, the question that remains to be adjudicated is whether the students who were given admission by the institution that had taken recourse to unholy and uncalled for practice should be allowed to suffer. We think not. Students are to be compensated. They had paid the fees. Hopes were kindled in their hearts and aspirations in their mind. Their young minds were polluted by the institution and, therefore, we direct the respondent-institution to pay Rs.10,00,000/- to each of the students who had taken admission apart from refunding their fees. Additionally, as the conduct of the 1st respondent, namely, G.C.R.G. Memorial Trust, is absolutely blameworthy, we impose costs of Rs.25 lacs to be deposited before this Court within eight weeks hence.

18. Before parting, it is necessary to add and repeat that the Division Bench had no reason to abandon the concept of judicial propriety and transgress the rules and further proceed on a path where it was not required to. Such things create institutional problems and we are sure that the learned Judges shall be guided by it. As far as the prayer of the institution as regards the Academic Session 2018-2019 is concerned, it does not deserve consideration and, accordingly, stands rejected. We say so as an unscrupulous litigant who conceived the idea of

paving the path of his own desire, moving according to his design, proceeding as per his whim and marching ahead with brazenness abandoning any sense of prudence cannot be leniently dealt with. It is the duty of the Court to take stringent action, for he has polluted the purity attached to the justice dispensation system and sullied the majesty of law.

19. In view of the aforesaid analysis, the appeal stands allowed. Costs as already assessed.

Judgment Referred.

[1]115 NYS 2d 122, 126 (1952)
[2]Clark, Tom C., "Mr. Justice Frankfurter : 'A Heritage for all Who Love the Law", 51 A.B.A.J. 330, 332 (1965)
[3]Foreword, to Memorial issue for Robert H. Jackson, 55 Columbia Law Review (April, 1955) p. 436
[4](1977) 2 SCC 0238
[5](2014) 5 SCC 0417
6(1997) 6 SCC 0450